



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : Marc Tillis

Appln. No.: 10/800,577

Filed : March 15, 2004

Title : Egg Nuggets

Docket No.: LL11.12-0103

Group Art Unit: 1761

Examiner: Anthony J. Weier

RESPONSE

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SENT VIA EXPRESS MAIL
Express Mail No.: EQ 141629592 US

Sir:

This Response is submitted in reply to the Office Action mailed on February 13, 2007. In the Office Action, the Examiner did not object to any claims and did not reject any claims, but instead stated a species election requirement under 35 U.S.C. §121. With this Response, no claims are amended, no claims are canceled, and no new claims are added. Upon entry of this Response, the above-identified application will include claims 1-68.

In the Office Action, the Examiner alleged the present application contains claims directed to two patentably distinct species and further alleged "Restriction to one of the following inventions is required under 35 U.S.C. §121." The Examiner alleged:

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-13 and 17-43 are generic.

The Examiner characterized the application as containing claims directed to the following patentably distinct species:

A. Egg-based material with added water (claims 23 and 53-68).

B. Egg-based material with no water or only incidental water (claims 14-16 and 44-52).

The Examiner also alleged:

The species are independent or distinct because hydrated and dry compositions have very different physical characteristics.

and concluded by stating:

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

As the Examiner requested, Applicant hereby elects, with traverse, the species of the present invention that comprises added water, which the Examiner alleges is exemplified by claims 23 and 53-68.

Applicant traverses the Examiner's characterization of claim 23 as allegedly belonging to the species of the present invention that comprises added water and the Examiner's characterization of the present invention as including a species containing "no water or only incidental water." Claim 23 reads as follows:

23. The egg-based material of claim 22 wherein:
the natural liquid egg component comprises free water; and
the cooked water-absorbent material comprises bread crumbs, free water
of the natural liquid egg component absorbed in the breadcrumbs.

and depends from independent claim 22 that reads as follows:

22. An egg-based material comprising:
an egg-based substance, the egg-based substance comprising a natural
liquid egg component; and
a cooked water-absorbent material distributed within the egg-based substance.

The Examiner's species election requirement is premised on (or more accurately should have been premised on) species comprising added water and species being free or essentially free of added water. The Examiner's characterization of the present invention as claiming a species containing "no water or only incidental water" is erroneous.

Instead, some claims of the application are defined in terms of a species that includes "added water" and other claims of the application are defined in terms of a species that is "free, or essentially free, of any added water." Support for these two species exists in the first paragraph on page 9 of the present application, which also defines the meaning of the "added water" terminology:

The egg-based substance may optionally include added water, though numerous embodiments are free, or essentially free, of any added water. If added water is included, the concentration of the added water in the egg-based substance may be up to 50 weight percent, based on the total weight of the egg-based substance. As used herein with regard to the egg-based substance, the term "added water" means

water added separately from any other component(s) of the egg-based substance and water included as part of any reconstituted (i.e. made from a dry or dried form) component(s) of the egg-based substance.

Emphasis added. Thus, in satisfaction of this traversal, Applicant respectfully requests that the Examiner properly define the species in terms of those comprising “added water” and those being free or essentially free of “added water.”

Furthermore, in satisfaction of this traversal, Applicant respectfully requests that the Examiner correct the Examiner’s erroneous characterization of claim 23 as belonging to the species that comprises added water. Claim 23 does not specify the existence of any “added water,” but instead specifies “the natural liquid egg component comprises free water.” The distinction between “free water” and “added water” is explained in the above-identified application, such as at lines 10-11 on page 13:

The natural liquid egg component(s) of the egg-based substance contain free water; added water may also be included in the egg-based substance.

Clearly, claim 23 does not belong to the species that explicitly comprises “added water.” Appropriate correction by the Examiner is respectfully requested.

As noted above, Applicant has elected the species comprising “added water,” and the Examiner alleged claims 23 and 53-68 read on this species that comprises “added water.” This contention of the Examiner is erroneous, with regard to claim 23. Instead, only claims 53-68, and not claim 23, read on (explicitly encompass) the elected species that comprises “added water.”

Finally, Applicant traverses the Examiner’s contention about the two species identified by the Examiner allegedly being independent or distinct “because hydrated and dry compositions have very different physical characteristics.” As noted above, the Examiner mischaracterized one of the two alleged species as containing “no water or only incidental water.” None of the claims presently provided in the above-identified application is defined in terms of a dry species or in terms of a species containing “no water or only incidental water.”

Instead, some claims of the application are defined in terms of a species that includes “added water” and other claims of the application are defined in terms of a species that is “free, or essentially free, of any added water.” The definition of the “added water” terminology provided in the first paragraph on page 9 of the present application does not indicate as the Examiner surmises, that the absence of “added water” means the substance is dry:

The egg-based substance may optionally include added water, though numerous embodiments are free, or essentially free, of any added water. If added water is included, the concentration of the added water in the egg-based substance may be up to 50 weight percent, based on the total weight of the egg-based substance. As used herein with regard to the egg-based substance, the term "added water" means water added separately from any other component(s) of the egg-based substance and water included as part of any reconstituted (i.e. made from a dry or dried form) component(s) of the egg-based substance.

Indeed, every claim presently in the above-identified application defines a natural liquid egg component. As seen from lines 10-11 on page 13 of the application, the natural liquid egg component contains free water:

The natural liquid egg component(s) of the egg-based substance contain free water; added water may also be included in the egg-based substance.

Thus, none of the claims presently provided in the above-identified application is defined in terms of a dry species or in terms of a species containing "no water or only incidental water." The Examiner's basis for alleging why the two species identified by the Examiner are allegedly independent or distinct ("because hydrated and dry compositions have very different physical characteristics") is therefore erroneous since no dry composition species is claimed. Appropriate correction of the Examiner's stated basis for why the two species identified by the Examiner are allegedly independent or distinct is respectfully requested.

Finally, the Examiner contends that claims 1-13 and 17-43 are generic. Applicant agrees with the Examiner's characterization of claims 1-13 and 17-43 as being generic.

CONCLUSION

Claims 1-68 are each believed allowable. Therefore, consideration and allowance of claims 1-68 is respectfully requested. The Examiner is invited to contact Applicant's below-named attorney, Philip F. Fox, to facilitate allowance of the above-identified application.

Respectfully submitted,

Date: February 13, 2007

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